IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUIT NO.664 OF 1996

Chetan Sheth& Anr. ...Plaintiffs.
Vs.
Federal Bank Ltd. & Ors. ...Defendants.
....
Mr. A. H. Mukri i/b. M/s. Purohit & Co. for the Plaintiff.
Mr.A. S. Pal with Mr. O.A. Das for Defendant No.1.
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CORAM :DR.D.Y.CHANDRACHUD, J.
July 12, 2007.

P.C.:

The Plaintiffs are investors who had applied on 24th March 1994 for the allotment of 20,000 shares of the the First Defendant under Application No.1296971 by Stock Investment No.194525 for Rs.4,50,000/-. This was deposited with the application along with the stock-investment of Bank of India, Mohamedali Road Branch with the Standard Chartered Bank on 24th March 1994. Pursuant to the application, the First Defendant allotted to the Plaintiff 400 shares and issued a debit note in the amount of Rs.36,000/- being the price of the said shares. The Plaintiffs' stock-investment account was credited for

the balance of Rs.4,14,000/-.

The case of the Plaintiffs is that they did not receive share certificates in respect of 400 shares either from the First Defendant or its Transfer Agent. On 24th August 2004, the Plaintiff received a letter from the then Transfer Agent of the First Defendant that out of the said 400 shares, 100 shares were lodged for registration by the Second Defendant. The share Transfer Agent, however, informed the Plaintiffs that the signatures of the Plaintiffs on the share transfer form differ from the specimen signatures recorded by the Company and the transfer deed was outdated. In reply, the Plaintiffs by a letter dated 22nd September 1994 stated that they had not received the share certificates of the shares allotted to them. In a letter dated 18th October 1994, the share Transfer Agent informed the Plaintiffs that the signature of the Plaintiffs did not tally with the specimen lodged and that in due course, papers would be forwarded for obtaining duplicate share certificates.

By a letter dated 22nd November 1994, the Plaintiffs lodged a complaint with the Second Defendant that the Second Defendant has stolen the shares and forged the signatures of the Plaintiffs and called for a disclosure as to how the Second Defendant had received the said 100 shares and to whom and how the consideration had been paid. The letter was received by the Second Defendant. In the meantime, the Plaintiffs received an intimation dated 21st December 1994 from the share Transfer Agent that the remaining 300 shares had also been lodged by Defendant Nos.3, 4, 5 and 6 for transfer. In a communication dated 9th January 1995, the Plaintiffs informed Defendant Nos.3 to 6 that the said shares were stolen and could not confer any right on the aforesaid Defendants. Replies were received from the Third Defendant and the Fourth and Fifth Defendants respectively, but there was no reply from the Sixth Defendant.

On 22nd August 1995, the First Defendant informed the Plaintiffs of the lodgment of the transfer deeds by Defendant Nos.3 to 6.

Accordingly, the present suit was instituted by the Plaintiffs seeking (a) A declaration that the Plaintiffs are the owners of the 400 shares of the First Defendant Company together with all the benefits attached or accrued thereupon; (b) A mandatory injunction for the delivery of the said 400 shares or the issuance of the duplicate shares in the name of the Plaintiffs; and (c) An injunction restraining the First Defendant against transferring the 400 shares and from dispatching and/or delivering of shares or any bonus or right shares or dividends or any other benefits except to the Plaintiffs.

The First Defendant has filed a Written Statement. The Second, Third, Fourth, Fifth and Sixth Defendants have not filed Written Statements despite service of the writ of Summons. An affidavit of service is filed.

In the Written Statement filed by the First Defendant, it has been urged that this Court has no territorial jurisdiction since the

Registered Office of the First Defendant is not situated within the limits of the Ordinary Original Civil Jurisdiction of this Court. The First Defendant has stated that it does not admit that Defendant Nos.2 to 6 fraudulently and illegally lodged 400 shares with forged Transfer Deeds. The First Defendant has further averred that it does not admit that the Plaintiffs did not receive the 400 shares from the Transfer Agent of the First Defendant. The First Defendant has, however, admitted that the Plaintiffs had applied for shares in the public issue; that consideration in respect of the shares was paid; and that the First Defendant had allotted 400 shares to the Plaintiffs. According to the First Defendant, the first lot of 100 shares lodged by the Second Defendant was refused for transfer on the ground that the signature of the Plaintiffs does not tally with the specimen signature registered with the First Defendant. It has been stated that the balance of the 300 shares were transferred in the name of buyers of the shares who are joined as Defendant Nos.3 to 6, but thereafter further transfers have been stopped in pursuance of the interim injunction issued by this Court.

Since it is only the First Defendant which has filed a Written Statement, the following issues would arise as between the Plaintiffs and the First Defendant on the basis of the defence raised in the Written Statement:

1. Does this Court have jurisdiction to entertain and try the suit?
2. Do the Plaintiffs prove that 400 shares of the First Defendant which were allotted to them were not delivered by the share transfer agent of the First Defendant ? and
3. Do the Plaintiffs prove that the share transfer deeds that were lodged by Defendant Nos.3 to 6 were forged?

The Plaintiffs have in lieu of Examination-in-Chief filed an affidavit dated 27th August 2004 of the Second Plaintiff. A compilation of the original documents has been tendered and taken on the record.

At the hearing of the suit Counsel appearing on behalf of the First Defendant had stated that the First Defendant would abide by such directions as would be issued by this Court. However, it has been stated before the Court on instructions that the First Defendant refused transfer of the first lot of 100 shares on the ground that the signatures of the Plaintiffs on the share transfer forms did not tally with those in the specimen signatures lodged with the First Defendant. In so far as the balance of the 300 shares are concerned, it has been stated that even before the order of injunction was served on the First Defendant, the shares were duly transferred in the names of Defendant Nos.3 to 6, but further transfers have been stopped.

An Interlocutory order of injunction was passed in the suit on the Notice of Motion taken out by the Plaintiffs on 9th December 1996. The ad-interim order was confirmed as an order on the Motion on 10th August 1998.

In so far as the issue of jurisdiction is concerned, it has been stated in para 13 of the Plaint that the shares of the First Defendant are listed and traded upon at the Stock Exchange, Mumbai. Moreover, it has been stated that the 400 shares were lost and stolen at Mumbai. However, the Defendants reside and carry on business outside Mumbai and duplicate shares were received from the First Defendant in Kerala. Leave under Clause 12 of the Letters Patent was granted. On the basis of the documentary material on record, the attention of the Court was drawn to the fact that the alleged forgery has been committed at Mumbai. The share transfer forms bear endorsement of the Registrar of Companies, Maharashtra, Mumbai and the signatures of the alleged witnesses on the share transfer deeds bear a Mumbai address. Having regard to these circumstances, particularly in view of the fact that leave under clause 12 of the Letters Patent is granted, this Court has jurisdiction to try and entertain the suit. The issue is accordingly answered.

From the affidavit of the First Defendant in lieu of Examination-in-Chief, it emerges that 400 shares which were allotted by the First Defendant were not delivered to the Plaintiffs. The First Defendant has not led any evidence to establish that the shares were duly delivered. Hence, the only conclusion which can be drawn is that the shares which were allotted were not delivered. The allotment of the shares to the Plaintiffs and the payment of the consideration by the Plaintiffs has not been disputed.

In so far as the allegation of forgery is concerned, it has been accepted by the First Defendant that the signatures of the Plaintiffs on the share transfer forms in the first lot of 100 shares differ from the specimen signatures of the Plaintiffs which were provided. In so far as the second lot of 300 shares is concerned, copies of the share transfer forms have been placed on the record. The signatures on each of the 300 share transfer forms each representing 100 shares are ex-facie a forgery. The signatures differ from the admitted signatures of the Plaintiffs as contained in the Plaint. It is evident

from a bare perusal of the signatures on the share transfer forms that the names of both the First and Second Plaintiffs have been mis-spelt. The signature of the Second Plaintiff is in capital letters and varies with the signature of the Second Plaintiff as contained in the Plaint.

The issues are accordingly answered by holding that this Court has jurisdiction to entertain and try the suit. The shares which were allotted to the Plaintiffs were in fact not delivered to the Plaintiffs and that the share transfer forms lodged by Defendant Nos.2 to 6 were a forgery. In these circumstances, the claim of the Plaintiffs is duly established on the basis of the evidence on record. The suit shall accordingly stand decreed in terms of prayer clause (a). In so far as prayer clause (b) is concerned, the First Defendant is directed by a mandatory order of injunction to issue duplicate share certificates to the Plaintiff in respect of the said 400 shares more particularly described in Exhibit “B” to the Plaint. There shall be an order of injunction in terms of prayer clause (e). The Plaintiffs would be

entitled to costs of the suit from Defendant Nos.2 to 6.

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